

929.2125 MHz to previously-unserved territory. In view of the fact that these other parties did not have this ability prior to the First R&O, stay of the First R&O as requested by TPI herein cannot be considered to harm these other parties.

29. TPI must also emphasize that the duration of the stay requested by TPI in this Emergency Motion can be substantially limited by immediate Commission action to grant TPI's Emergency Petition and identify TPI's nationwide exclusive frequency 929.2125 MHz as one of the nationwide exclusive PCP frequencies that is exempt from the Modified Freeze and excluded from geographic licensing. As demonstrated in TPI's Emergency Petition, the Commission should have addressed this issue in the First R&O because this issue was raised by TPI in TPI's Interim Comments and Interim Reply Comments. Having failed to act in the First R&O, the Commission must now immediately grant TPI's Emergency Petition, thereby minimizing the duration of the stay requested by TPI herein, and allowing the remaining provisions of the First R&O to become effective as rapidly as possible with minimum impact on other parties.

D. The Public Interest Favors Stay

30. The public interest favors grant of the instant Emergency Motion and stay of the First R&O until the Commission grants TPI's Emergency Petition and recognizes that TPI's frequency 929.2125 MHz is a nationwide exclusive PCP frequency exempt from the Modified Freeze and excluded from geographic licensing. First, in the First R&O, the Commission itself recognized the need for rapid resolution

of both the Freeze and the Modified Freeze and the underlying issue of geographic licensing of CCP and PCP paging frequencies.³⁷ Failure to stay the First R&O until the Commission can address the vitally important issue raised in TPI's Emergency Petition will subject the Commission's entire proposed geographic licensing scheme to reversal upon the judicial review that TPI must seek if the Commission fails to grant TPI's Emergency Petition. Such reversal will throw the Commission licensing processes for CCP and PCP channels into extraordinary confusion that would be virtually impossible to resolve. Moreover, pending final decision on such judicial review, the Commission auction of geographic licenses for CCP and PCP channels would be subject to severe uncertainties that will dramatically affect the manner in which such licenses are issued and the amounts that will be generated from such auctions.

³⁷The Commission stated that:

We recognize, however, that an across-the-board freeze imposes significant costs on legitimate paging licensees with operating systems. As we recognized in the [NPRM], the paging industry is a dynamic and highly competitive industry that is experiencing rapid growth. More than 140 paging channels are allocated to each market, and over 600 licensed operators provide service to customers on a local, regional, or nationwide basis. In the past few years, paging subscribership has increased dramatically, but competition has kept average prices low. To meet customer needs and improve service to the public in this highly competitive environment, paging operators need flexibility not only to make modifications within their existing service areas, but to add sites that extend the coverage of their systems into areas of new growth, such as outlying suburbs and new business centers. Even a short-term freeze has the potential to harm the paging industry and the public by deterring this growth and stifling investment.

First R&O at ¶21 (footnote omitted).

Further, the Modified Freeze itself will be the subject of extensive litigation both before the Commission (with respect to Modified Freeze Applications and New Post-Freeze Applications) and in the courts. All of these reasons demonstrate that the public interest will be served by stay of the Interim Rules pending Commission action on TPI's Emergency Petition.

31. In addition, the Commission has long held that the public interest is served by: (1) establishment of CCP and PCP systems that serve a wider geographic area; and (2) fostering the development of nationwide paging systems. For example, in the R&O adopting exclusivity requirements for PCP channels, the Commission stated that:

The purpose of nationwide exclusivity is not only to prevent interference with existing operations, but to provide an incentive for future expansion of coverage by nationwide licensees.

R&O, 8 FCC Rcd at 8323.

Similarly, in justifying its requirement that Phase II PCP applicants comply with either local, regional or nationwide exclusivity requirements and establishing a dispositive eligibility preference in MX situations in favor of existing licensees expanding PCP systems over applicants for initial systems, the Commission stated that:

First, the restriction will tend to encourage development of systems that cover a larger area over those that cover a smaller area. Because increased coverage allows customers greater mobility without loss of access to service, we believe that wider-area systems are generally more beneficial to paging customers and more responsive to the rising demand for paging services. Second, allowing existing licensees to expand their service area will result in broader coverage for existing users of

those systems, whereas authorizing a new competing system would prevent such users from obtaining expanded coverage without subscribing to both services. Third, by encouraging expansion of existing systems, the restriction will promote rapid access to wide-area service for new users as such systems reach new areas, whereas applicants who have yet to construct any portion of their systems would generally require more time to make wide-area service available.

R&O at 8330.

These public interest findings in favor of wider area paging systems have also been adopted in numerous other Commission proceedings.³⁸

32. As demonstrated in this Emergency Motion, failure by the Commission to grant TPI the stay requested herein will devastate TPI's ability to promptly and efficiently complete construction of the TPI Nationwide System as authorized in the Slow Growth Authorization and as TPI intends to expand that system throughout the country. As a result, failure by the Commission to grant the relief requested by TPI will directly contravene the important and oft-repeated public interest mandate in favor of wider geographic area paging systems, including nationwide paging systems like the TPI Nationwide System.

III. Conclusion

33. For all of the foregoing reasons, TPI respectfully requests Commission action to stay the Interim Rules as adopted in the First R&O pending Commission action on TPI's simultaneously-filed Emergency Petition. Stay is warranted under relevant, well-

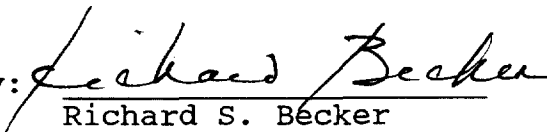
³⁸See, e.g., NPRM at ¶¶19-23; Report and Order, CC Docket Nos. 92-115, 94-46, 93-116, 9 FCC Rcd 6513, 6526-6528 (1994).

established analytical standards and TPI requests that the Commission act **IMMEDIATELY** to grant the stay requested herein.

WHEREFORE, TPI respectfully requests **IMMEDIATE** stay of the Interim Rules adopted in the First R&O.³⁹

Respectfully submitted,

TSR PAGING INC.

By: 
Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel

Its Attorneys

Richard S. Becker & Associates, Chartered
1915 Eye Street, NW; Eighth Floor
Washington, DC 20006
(202) 833-4422

Date: May 6, 1996

³⁹Attached hereto as Exhibit 1 is a Declaration by Mr. Leonard DiSavino, President of TPI, attesting to those facts set forth herein of which official notice cannot be taken. It should be noted that a facsimile copy of Mr. DiSavino's executed Declaration is being submitted herewith because the original Declaration has not yet been received in the offices of undersigned counsel for TPI. Mr. DiSavino's original Declaration will be submitted as a Supplement to this Emergency Motion as soon as it is received.

Exhibit 1

DECLARATION OF LEONARD DISAVINO

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LEONARD DISAVINO**

I, Leonard DiSavino, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct of my own personal knowledge and belief:

1. I am President of TSR Paging Inc. ("TPI").
2. I have reviewed the foregoing "Emergency Motion For Stay" ("Emergency Motion") to be filed on behalf of TPI in the Commission rulemaking proceeding in WT Docket No. 96-18, PP Docket No. 93-253. I have also reviewed the "Emergency Petition For Reconsideration" ("Emergency Petition") to be filed on behalf of TPI simultaneously with the Emergency Motion.
3. Except for those facts of which official notice may be taken by the Commission, all facts set forth in the foregoing Emergency Motion and the Emergency Petition are true and correct of my own personal knowledge and belief.



Leonard DiSavino

Date: May 6, 1996

CERTIFICATE OF SERVICE

I, Jeffrey E. Rummel, an associate in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 6th day of May, 1996, caused to be hand delivered copies of the foregoing **"EMERGENCY MOTION FOR STAY"** to the following:

Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, NW; Room 814
Washington, D.C. 20554

James H. Quello, Commissioner
Federal Communications Commission
1919 M Street, NW; Room 802
Washington, D.C. 20554

Rachelle B. Chong, Commissioner
Federal Communications Commission
1919 M Street, NW; Room 844
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, NW; Room 832
Washington, D.C. 20554

William E. Kennard, General Counsel
Federal Communications Commission
1919 M Street, NW; Room 614
Washington, DC 20554

Michele C. Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW; Room 5002
Washington, DC 20554

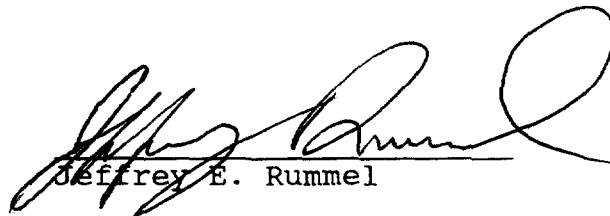
David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW; Room 7002
Washington, DC 20554

Mika Savir, Attorney
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW; Room 7002
Washington, DC 20554

Terry L. Fishel, Chief*
Land Mobile Branch, Licensing Division
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

Michael Regiec, Deputy Chief*
Land Mobile Branch, Licensing Division
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

Gary Devlin, Technical Engineer*
Land Mobile Branch, Licensing Division
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245



Jeffrey E. Rummel

* Via United Parcel Service overnight courier.